

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 93-0406 CSET
Controlled Substance Excise Tax – Imposition
For Tax Period: 1993**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax — Imposition

Authority: IC 6-7-3-5; IC 35-48-4-11; IC 6-8.1-5-1

Taxpayer protests the imposition of the controlled substance excise tax.

STATEMENT OF FACTS

On January 7, 1993, police arrested taxpayer for possession with intent to deal marijuana. Following arrest, the Department assessed Indiana's controlled substance excise tax against taxpayer on 95 grams of marijuana. At the statutory rate of \$40.00 per gram, the base tax deficiency amounted to \$3,800.00. With the addition of the statutory 100% penalty, taxpayer's total liability came to \$7,600.00. Taxpayer protests a portion of this assessment.

I. Controlled Substance Excise Tax – Imposition

DISCUSSION

The Department notified taxpayer, in writing, of the scheduled date and time for the hearing of this protest. Taxpayer failed to appear or send any representation. These findings, therefore, are based on the information that was available to the Department at the time of the scheduled hearing.

Taxpayer argued in his protest letter that the controlled substance excise tax was assessed against him on an erroneous amount. The Department assessed tax on 95 grams of marijuana. In taxpayer's subsequent criminal proceeding, the prosecution stipulated, and the court found, that taxpayer possessed only 30.1 grams of marijuana. Taxpayer believes that the Department should now revise its assessment in a manner consistent with the stipulated amount.

While taxpayer attacks, collaterally, the results of the Department's investigation, taxpayer has failed to present any direct evidence refuting the validity of the investigation's results.

IC 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered;
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C 841 through 21 U.S.C. 852. The tax does not apply to a controlled substance that is distributed, manufactured, or dispensed by a person registered under IC 35-48-3.

Possession of marijuana is defined in IC 35-48-4-11:

Section 11. A person who:

- (1) knowingly or intentionally possesses (pure or adulterated) marijuana, hash oil, or hashish;

commits possession of marijuana , hash oil, or hashish, a Class A misdemeanor.

Pursuant to IC 6-8.1-5-1, the notice of proposed assessment is prima facie evidence that the Department's claim is valid. The burden of providing information rebutting this assessment rests with the taxpayer. In this instance, taxpayer has failed to meet his burden of proof.

FINDING

Taxpayer's protest is denied.